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ATTORNEY FOR APPELLANT:

**BRIAN J. MAY**  
South Bend, Indiana

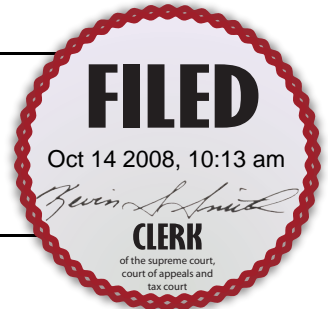
ATTORNEY FOR APPELLEE:

**SHARON R. ALBRECHT**  
St. Joseph County Department of Child Services  
South Bend, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN THE MATTER OF THE TERMINATION )  
OF THE PARENT – CHILD RELATIONSHIP )  
OF A.J.S., )

R.F.S., )

Appellant-Respondent, )

vs. )

ST. JOSEPH COUNTY DEPARTMENT )  
OF CHILD SERVICES, )

Appellee-Petitioner. )

No. 71A03-0804-JV-210

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APPEAL FROM THE ST. JOSEPH PROBATE COURT  
The Honorable Barbara J. Johnston, Magistrate  
The Honorable Peter J. Nemeth, Judge  
Cause Nos. 71J01-0705-JT-64

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**October 14, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

Case Summary and Issue

Robert S. (“Father”) appeals the involuntary termination of his parental rights, in St. Joseph Probate Court, to his daughter, A.J.S. On appeal, Father claims there is insufficient evidence supporting the trial court’s judgment terminating his parental rights to A.J.S. Concluding that the trial court’s judgment is supported by clear and convincing evidence, we affirm.

### Facts and Procedural History

Father is the biological father of A.J.S., born December 25, 2001.<sup>1</sup> Father is also the biological father of three of A.J.S.’s five siblings. Father’s parental rights to those three children (A.J.S.’s siblings) were involuntarily terminated prior to the circumstances surrounding the commencement of this case. The facts most favorable to the judgment reveal that the St. Joseph County Department of Child Services (“DCS”) received a report that on or about November 7, 2005, Mother, who was married to and living with Father, had been arrested for soliciting an undercover police officer for prostitution. At the time of Mother’s arrest, Mother had brought the undercover police officer back to the family home to complete the transaction. Father, three-year-old A.J.S., and A.J.S.’s maternal grandmother were all at home when Mother arrived with her “solicited client,” whom she introduced to both A.J.S. and A.J.S.’s grandmother. Pet. Ex. 2-B.

DCS case manager Sandy Reihl filed a report requesting that an intake officer make a preliminary inquiry to determine whether further action to protect A.J.S. was required based on the circumstances surrounding Mother’s arrest and the fact Mother had already lost

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<sup>1</sup> A.J.S.’s biological mother, Rochelle H.-S. (“Mother”), voluntarily relinquished her parental rights to A.J.S. on February 28, 2008. Mother’s parental rights to four of A.J.S.’s five older siblings were involuntarily terminated prior to the commencement of this case. Mother’s sixth child resides with that

parental rights to five other children due to neglect. Following an investigation, A.J.S was taken into protective custody. On December 9, 2005, the trial court issued a detention order finding there was probable cause to believe A.J.S. was a child in need of services (“CHINS”) and granted DCS temporary custody and wardship of A.J.S.

DCS filed a petition alleging A.J.S. was a CHINS on February 27, 2006, and an initial hearing on the petition was held the same day. Mother and Father both appeared and were represented by counsel. Both parents admitted that A.J.S. was a CHINS. On April 5, 2006, following a hearing, the trial court found that reasonable efforts to reunify A.J.S. with her parents were not required pursuant to Indiana Code section 31-34-21-5.6 and ordered all reunification and family preservation efforts by DCS to cease.

A dispositional hearing was also held on April 5, 2006, and the trial court issued its dispositional order the same day. In its order, the trial court directed Father to “fully participate in the services, treatment, and/or supervision ordered for the children” in the Parental Participation Petition. Appellant’s Appendix at 118. Father was ordered to: (1) participate in individual counseling; (2) participate in family counseling; (3) exercise visitation on a regular basis; (4) cooperate with home-based services; (5) complete a drug or alcohol rehabilitation program and follow all after care recommendations; (6) submit to random drug screens upon the request of the DCS; (7) complete a parenting assessment and follow all recommendations; (8) complete parenting classes; (9) complete a psychological evaluation and follow all recommendations; (10) maintain stable employment and/or a stable source of income; (11) maintain stable housing; (12) remain drug free; (12) maintain

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child’s father. Mother does not participate in this appeal.

consistent contact with DCS; and (13) complete high school or obtain a GED.

On May 21, 2007, DCS filed a petition to involuntarily terminate Father's parental rights. A fact-finding hearing on the involuntary termination petition was held on April 11, 2008. Father was present and represented by counsel. At trial, Dr. Alan Wax, a psychologist, stated that he had conducted a psychological evaluation and parenting assessment on Father at the request of DCS. Dr. Wax reported that Father's I.Q. was 77, "which is at the top end of the borderline range." Transcript at 9. Dr. Wax explained that this meant Father would most likely understand the expectations placed on him as a parent and would likely be able to follow instructions from doctors and teachers. However, Dr. Wax expressed concerns regarding Father's very low scores in areas of appropriate expectations, empathy, role reversal, and power independence. Father also scored very poorly on a "Nurturing Test," which measures a parent's attitude toward parenting. Id. at 13. Based on his findings, Dr. Wax testified that he "would have very serious concerns" regarding Father's ability to appropriately parent if Father did not participate in both parenting classes and individual counseling. Id. at 22.

During the termination hearing, Father admitted he had never participated in individual or family counseling, had never paid child support for A.J.S., and had never obtained his G.E.D. Father also stated that it took three attempts to successfully complete one parenting course, that his employment throughout the CHINS proceedings had been sporadic with long periods of unemployment, and that he had failed at least two drug tests in 2007. Father indicated, however, that his most recent drug tests had been negative and that he had re-enrolled and was participating in drug counseling. Additionally, Father stated he

was living with his parents and that he had begun working as a handyman two weeks prior to the termination hearing.

Court-appointed Special Advocate Berrett Bonebrake was also present at the termination hearing and testified that she felt the conditions leading to A.J.S.'s removal from Father's care had not been remedied. Bonebrake stated she had encouraged Father to be in compliance with the dispositional order, but that Father had become "increasingly hostile" toward her and as of two weeks prior to the termination hearing, refused to have any contact with her. Id. at 44. Bonebrake also testified that she had contacted Father's mother and asked to visit the family home where A.J.S. would be living if reunification occurred, but was denied access and was informed by Father's mother that A.J.S. would not be welcome to live in her home.

DCS caseworker Apryl Davis also recommended termination of Father's parental rights during the hearing because Father had failed to follow the recommendations of Dr. Wax and had failed to achieve "stable employment, stable housing," or any "stability overall." Id. at 35. Davis further testified that she believed termination was in A.J.S.'s best interests and that DCS's plan for A.J.S. was adoption by her current foster parents, with whom A.J.S. was "very bonded." Id. at 34.

At the conclusion of the termination hearing, the trial court took the matter under advisement. On April 18, 2008, the trial court issued its order terminating Father's parental rights to A.J.S. This appeal ensued.

## Discussion and Decision

### I. Standard of Review

This court has long held a highly deferential standard of review in cases concerning the termination of parental rights. In re K.S., 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we neither reweigh the evidence nor judge the credibility of the witnesses. In re Kay L., 867 N.E.2d 236, 239 (Ind. Ct. App. 2007). Instead, we consider only the evidence that supports the trial court's decision and the reasonable inferences drawn therefrom. Id.

Here, the trial court made specific findings in terminating Father's parental rights. When the trial court enters specific findings of fact, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). Second, we determine whether the findings support the judgment. Id. In deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied. A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment. Bester, 671 N.E.2d at 147. If the evidence and inferences support the trial court's decision, we must affirm. L.S., 717 N.E.2d at 208.

## II. Remedy of Conditions

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. Bester, 839 N.E.2d at 147. A parent's interest in the care, custody, and control of his or her children is perhaps the oldest of our fundamental liberty interests. Id. However, these parental interests are not absolute

and must be subordinated to the child's interests when determining the proper disposition of a petition to terminate parental rights. In re M.B., 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), trans. denied. Parental rights may therefore be terminated when a parent is either unable or unwilling to meet his or her parental responsibilities. K.S., 750 N.E.2d at 836.

In order to terminate a parent-child relationship, the State is required to allege:

- (A) one (1) of the following exists:
  - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree
  - (ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required . . . or,
  - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two months;
- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2). The State must prove each of these allegations by clear and convincing evidence. Egley v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992). If a trial court finds the allegations in a termination petition "described in

section 4 of this chapter are true, the court shall terminate the parent-child relationship.” Ind. Code § 31-35-2-8. We further note that even when the trial court decides reasonable efforts at reunification by DCS are not required, Indiana Code section 31-34-21-5.6 does not relieve DCS from proving, by clear and convincing evidence, the elements of Indiana Code section 31-35-2-4(b)(2). G.B. v. Dearborn County Div. of Family & Children, 754 N.E.2d 1027, 1032 (Ind. Ct. App. 2001), trans. denied.

Father’s sole allegation on appeal is that DCS failed to prove by clear and convincing evidence that there is a reasonable probability the conditions resulting in A.J.S.’s removal from his care will not be remedied and that continuation of the parent-child relationship poses a threat to A.J.S.’s well-being. In so doing, Father admits he “did not complete his case plan requirements and had not made child support payments[,]” but argues he nonetheless was “drug free at the time of the trial, had a place for his child to live and [the] means to support his family[.]” Appellant’s Brief at 8. Father therefore concludes that “[s]ince low I.Q. by itself does not disqualify one from being a parent,” his parental rights should not have been terminated. Id.

Initially, we observe that Indiana Code section 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, a trial court need only find by clear and convincing evidence that one of the two requirements of subsection (B) have been satisfied in order to terminate a parent-child relationship. See L.S., 717 N.E.2d at 209. Accordingly, we shall first consider whether DCS proved by clear and convincing evidence that there was a reasonable probability the conditions resulting in A.J.S.’s removal and continued placement outside Father’s care would not be remedied.

When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the trial court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. In re J.T., 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), trans. denied. However, the court must also "evaluate the parent's habitual patterns of conduct to determine the probability of future neglect or deprivation of the child." Id. Pursuant to this rule, courts have properly considered evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support, and lack of adequate housing and employment. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1251 (Ind. Ct. App. 2002), trans. denied. DCS need not rule out all possibilities of change; rather, it need establish only that there is a reasonable probability a parent's behavior will not change. Kay L., 867 N.E.2d at 242.

Father is correct that mental disability, standing alone, is not a proper ground for terminating parental rights. See R.G. v. Marion County Office, Dep't of Family & Children, 647 N.E.2d 326, 330 (Ind. Ct. App. 1995) (stating mental retardation, standing alone, not a proper ground for termination of parental rights but may be considered when parent incapable or unwilling to fulfill legal obligations in caring for child), trans. denied. We find no evidence, however, to support Father's unsubstantiated claim that his parental rights were terminated based solely on his I.Q. score. To the contrary, the evidence most favorable to the judgment reveals that A.J.S. was initially removed from the family home because of the events surrounding Mother's prostitution arrest and a subsequent investigation of the family

circumstances by DCS. The reason for A.J.S.'s continued placement outside of Father's care was his non-compliance with court-ordered services and his continuing inability to provide A.J.S. with a stable home environment and an appropriate level of care.

Although Father did eventually participate in some of the court-ordered services, including psychological testing and drug counseling, by the time of the termination hearing, Father had failed to complete the majority of court-ordered dispositional goals. For example, Father had failed to participate in individual counseling, had failed to participate in family counseling, had failed to pay child support, had failed to obtain stable employment (although he did work sporadically throughout the CHINS proceedings), and had failed to obtain his G.E.D. Additionally, although Father had participated in parenting classes, it took three attempts to finish the course, and Father never received a certificate of completion because he failed to pay the registration fee.

The record also reveals that despite the fact Father had begun to consistently visit with A.J.S. in 2007, Father had failed to visit A.J.S. at all during 2005 and only three times in 2006. Additionally, Davis explained that home-based services had never been provided because Father had failed to progress with the court's dispositional goals to the point of being eligible for such services. Davis also testified that the reasons for A.J.S.'s removal from Father's care had not been remedied and, in recommending termination of Father's rights, Davis referred to Father's failure to follow the recommendations of Dr. Wax, his failure to achieve stable employment and housing, and his failure to obtain any overall stability.

Similarly, in testifying that she, too, did not feel the conditions resulting in A.J.S.'s removal had been remedied, Bonebrake testified during the termination hearing that she

remained concerned about Father's parenting ability. Bonebrake described Father as "uncooperative" and testified Father had provided her with "no evidence whatsoever" to show he was employed and participating in individual therapy. Tr. at 55. When asked about her observations during visitation, Bonebrake stated Father's visits with A.J.S. "as of late [had] been very difficult for [A.J.S.]" and that there was "a lot of tension" during visits. Id. at 49, 53. Bonebrake went on to describe a recent visit in which Father and A.J.S. had disagreed over what game to play and described Father as having been "very insistent, almost to the point of bullying." Id. at 56. Bonebrake also testified A.J.S. had hidden in the closet during her last visit with Father. Based on her observations of Father during visitation with A.J.S., Bonebrake concluded that she felt Father had not "shown enough stability or enough . . . empathy towards [A.J.S.] to effectively parent her." Id. at 57.

When considering whether to terminate a parent-child relationship, a trial court must assess a parent's ability to care for her child as of the date of the termination hearing. Rowlett v. Vanderburgh County Office of Family & Children, 841 N.E.2d 615, 621 (Ind. Ct. App. 2006), trans. denied. Moreover, "[a] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support[s] a finding that there exists no reasonable probability that the conditions will change." Lang v. Starke County Office of Family & Children, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007), trans. denied. Based on the foregoing, we conclude DCS presented clear and convincing evidence to support the trial court's finding that there is a reasonable probability the conditions leading to A.J.S.'s removal and continued placement

outside of Father's care will not be remedied.<sup>2</sup> This finding likewise supports the trial court's ultimate decision to terminate Father's parental rights to A.J.S. Although Father may have a sincere desire to be reunited with A.J.S., the evidence reveals he has been either unable or unwilling to make choices that will provide A.J.S. with a safe and stable living environment. By asking us to consider the evidence favorable to him, Father improperly invites us to reweigh the evidence, and this we may not do. In re D.D., 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), trans. denied; see also Bester, 839 N.E.2d at 149 (stating the trial court is vested with the responsibility of resolving conflicting testimony).

### Conclusion

A trial court need not wait until a child is "irreversibly influenced" such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. A.F. v. Marion County Office of Family & Children, 762 N.E.2d 1244, 1253 (Ind. Ct. App. 2002). In the present case, a thorough review of the record reveals that the trial court's decision to terminate Father's parental rights to A.J.S. was not improperly based on Father's low I.Q. Rather, clear and convincing evidence indicates there is a reasonable probability the conditions resulting in A.J.S.'s removal, namely, Father's inability to provide A.J.S. with a safe and stable home environment, will not be remedied. Accordingly, we affirm the judgment.

Affirmed.

NAJAM, J., and MAY, J., concur.

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<sup>2</sup> Having determined that the trial court's conclusion regarding the remedy of conditions is supported by clear and convincing evidence, we need not address the issue of whether DCS proved by clear and convincing evidence that the continuation of the parent-child relationships poses a threat to A.J.S.'s well-

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being. See L.S., 717 N.E.2d at 209.